

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOHN MARK RICHARDSON,)	
)	
Petitioner,)	
)	1:11CV688
v.)	1:04CR90-1
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

RECOMMENDATION AND ORDER
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a federal prisoner, has submitted what is labeled as a motion challenging a “Rule 36 Violation.” In that document, he attacks his sentence based on what he claims is an “Illegal Sentencing Scheme.” Because his filing is a post-conviction attack on his conviction or sentence, it must be construed as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. This motion cannot be further processed because court records reveal that he has previously filed a § 2255 motion in this court [1:06CV1080]. Consequently, Petitioner must move in the Fourth Circuit Court of Appeals for an order authorizing this district court to consider the current motion. This is required by 28 U.S.C. § 2255 and 28 U.S.C. § 2244. See AO 243 (MDNC 3/97), *Instructions*, ¶ (4), which is enclosed. Because of this pleading failure, this particular motion should be filed, treated as a motion under § 2255, and then dismissed.

IT IS THEREFORE RECOMMENDED that this action be filed as a motion under § 2255 and then dismissed *sua sponte* for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the court of appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d).

IT IS THEREFORE ORDERED that the Clerk send Petitioner a copy of this Recommendation, instruction forms for filing § 2255 motions in this court and Motions for Authorization in the court of appeals, and four copies of § 2255 motion forms (more copies will be sent on request). Petitioner should keep the original and two copies of the § 2255 motion which can be submitted in this court if Petitioner obtains approval from the Fourth Circuit.


Wallace W. Dixon, U. S. Magistrate Judge

August 29, 2011